

6 JUNE 1947

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of
WITNESSES

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6 JUNE 1947

I N D E X
of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
None	2709		Map of Manchuria and Mongolia published by the Kwantung Territory Government in September 1926 (prosecution document 2993-A previously marked for identification only)		2369
None	2709-A		Excerpt therefrom		23694
None	2710		Map published by the Quartermaster Department of the Kwantung Government General in 1911 (prosecution document 2993-B)	23695	23697
None	2710-A		Excerpt therefrom		23697
None	2711		Large Map of China and Manchuria drawn up by the Research Scientific Department of the Society of the East Asia Culture, published by the Printing Office Fuzambo in November 1932 (prosecution document 2993-B)	23698	23702
None	2711-A		Excerpt therefrom		23702
751		719B	Map (attached to exhibit No. 719)		23717
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Of

EXHIBITS

(cont'd)

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
1695	2712		Telegram from the Charge d'Affaires in Moscow to the Secretary of State, Washington, dated 11 August 1938 re the Soviet Budget		23723
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Friday, 6 June 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

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Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Colonel Smirnov.

4 COLONEL SMIRNOV: Your Honor, I would like
5 to continue my cross-examination of the witness but
6 the witness is not in the witness box as yet -- on
7 the witness stand as yet.

8 MARSHAL OF THE COURT: Mr. President, the
9 witness is not available in the building this morning.
10 I am not informed as to his whereabouts.

11 THE PRESIDENT: We will suspend judgment
12 until we hear all about it.

13 MR. BLAKENEY: The witness is waiting in
14 the witness room and is now coming.

15 - - -

16 M I T S U J I Y A N O, called as a witness on
17 behalf of the defense, resumed the stand and
18 testified through Japanese interpreters as follows:

19 CROSS-EXAMINATION

20 BY COLONEL SMIRNOV (Continued):

21 Q Witness, look at the markings on the map
22 which was handed to you yesterday. Look at the in-
23 scription, at the marking in the left bottom corner
24 of the map.
25

Was this map published by the Kwantung

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1 Territory Government, was it?

2 MR. BLAKENEY: May I ask which of the maps
3 handed to the witness yesterday is now under discussion?

4 COLONEL SMIRNOV: This map was handed to
5 the witness at the end of the session yesterday.
6 This is the map published in September, 1926, and
7 is the map of Manchuria and Mongolia. It was published
8 by the Kwantung Territory Government.

9 Q Do you say that this map was published in
10 September, 1926 by the Kwantung Territory Government?

11 A Yes, I do.

12 Q Is the meaning of the markings on the map
13 and the points of the compass on this map clear to you?

14 A I do.

15 Q Find on the map the area of the Buirnor
16 Lake and the Halha River -- and the area of the Halha
17 River.

18 A Yes, I found it -- I found them.

19 Q Is it clear to you that the border line
20 as marked on this map passes east of the Halha River,
21 that is, in accordance with the assertions of the
22 Mongolian and Soviet side?

23 A On this map that fact is very plain.

24 COLONEL SMIRNOV: I offer this map and the
25 excerpts from this map in evidence -- the excerpts of

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1 this map served upon the Tribunal and the defense.

2 THE PRESIDENT: Major Blakeney.

3 MR. BLAKENEY: I would like to have a look
4 at the original before it is offered.

5 COLONEL SMIRNOV: This map was taken from
6 Imperial Library in Tokyo and a certificate to that
7 effect is attached to the map and was served on the
8 Court.

9 MR. BLAKENEY: No objection.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution document
12 2993-A is now received in evidence and retains the
13 same exhibit number, being 2709, and the excerpt
14 therefrom will be given 2709-A.

15 (Whereupon, prosecution exhibit
16 No. 2709 for identification and the excerpt
17 therefrom being marked No. 2709-A were
18 received in evidence.)

19 COLONEL SMIRNOV: Now I want to pass on to
20 some previous time and refer to the map published in
21 1911 by the Kwantung Army.

22 I tender this map published by the Quarter-
23 master Department of the Kwantung Army. I offer this
24 map published by the Quartermaster Office of the
25 ground forces of the Kwantung Territory in 1911 for

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1 identification.

2 CLERK OF THE COURT: Prosecution document
3 No. 2993-D will receive exhibit No. 2710 for identifi-
4 cation only.

5 (Whereupon, the document above
6 referred to was marked prosecution exhibit
7 No. 2710 for identification only.)

8 COLONEL SMIRNOV: May I ask to send the
9 copies of the map to the Members of the Tribunal and
10 the original of the map to the witness.

11 RUSSIAN INTERPRETER: Correction, please,
12 to the previous statement of the Soviet prosecutor:
13 instead of "Kwantung Territory" it should be "Kwantung
14 Government General."

15 COLONEL SMIRNOV: I should like to ask the
16 witness to look at the map in such a way that some-
17 thing remains from it. May the map be shown to the
18 witness.

19 Q Mr. Witness, pay attention to the inscriptions
20 on this map. Do you see that it was published by the
21 Quartermaster Department of the Kwantung Army in 1911?
22

23 RUSSIAN INTERPRETER: Not "Quartermaster"
24 but "Intendance Department of the Kwantung Army."

25 A No, that is not so.

Q By whom then?

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1 A No, that is not so. This map was issued
2 by the Kwantung Government General -- prepared by the
3 Kwantung Government General.

4 Q Is it said on this map that it was drawn
5 up by an officer, by an intendance officer of the
6 first class, Torchiro and Asahi, and published by
7 the intendance department of the ground forces of
8 the Kwantung Government General in 1911, in September,
9 1911?

10 A The prosecutor has confused the Kwantung
11 Army and the Kwantung Government General.

12 Q Then you say that this map was published
13 by the Kwantung Government General, don't you?

14 A Yes.

15 Q Find on this map the Buirnor Lake and the
16 Halha River.

17 A Yes, I found it.

18 Q Have you found out that on this map the
19 border line passes to the east of the Halha River,
20 that is, in accordance with contentions of the Soviet-
21 Mongolian side?

22 A It is so on this map.

23 Q Now let us consider another map. I am
24 sorry -- I tender this map and the copies of the
25 parts of this map in evidence. They were tendered

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1 already for identification.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution document
4 2993-D is now received in evidence and retains the
5 same exhibit number, 2710, and the excerpt therefrom
6 will receive exhibit No. 2710-A.

7 (Whereupon, prosecution exhibit
8 No. 2710 for identification and the excerpt
9 therefrom being marked No. 2710-A were
10 received in evidence.)

11 Q Mr. Witness, you testified about the border
12 line from the solely scientific point of view, did you?

13 A It would be a mistake to say that I had
14 given it a scholastic study but it was my function,
15 my duty to study the problem.

16 COLONEL SMIRNOV: Up to now you were shown
17 official maps published by the Government General of
18 the Kwantung Province and by the Kwantung Army. Now
19 I will show you a scientific map.

20 I tender for identification the large map
21 of China and Manchuria drawn up by the Research
22 Scientific Department of the Society of the East Asia
23 Culture, published by the printing office Fuzambo in
24 November, 1932.

25 CLERK OF THE COURT: The map referred to,

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1 being prosecution document 2993-B, will receive
2 exhibit No. 2711 for identification only.

3 (Whereupon, the document above
4 referred to was marked prosecution exhibit
5 No. 2711 for identification only.)

6 COLONEL SMIRNOV: May the copies of the
7 map be handed to the Court and the original of the
8 map to the witness -- and the original to the witness.

9 Q Unfold the map, Mr. Witness, and look at
10 the markings on this map. Do you see that it is a
11 big map of China and Manchuria drawn up by Scientific
12 Research Department of East Asia Cultural Society and
13 published by the printing house Fuzambo?

14 A Yes, I understand.

15 Q Now find on this map the area of the
16 Buirnor Lake and the Halha River.

17 A I have found it.

18 Q You see now that on this map the border line
19 passes east of the Halha River, that is, again in
20 accordance with the contentions of the Soviet and
21 Mongolian side?

22 A Yes, I see that very well on this map.

23 Q Then on the maps drawn up and published by
24 the Kwantung Government General and the Kwantung Army
25 in 1911, 1926 and 1934 and on the map drawn up by the

1 Research Scientific Description Department of East
2 Asia Cultural Society the border line passes to the
3 east of the Halha River, isn't it so?

4 A It is just as you say according to the
5 maps which have thus far been shown to me by the
6 prosecutor.

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1 Q Not according to -- not on one map but on
2 the maps. I have shown to you maps of 1911, 1926
3 and 1934 and the last map, and on all these maps
4 the borderline passes to the east of the Halha River.

5 A On the maps which were shown to me since
6 yesterday, it is just as the prosecutor says.

7 Q Then, you see now that the borderline on
8 the Halha River, as shown on the map published by
9 the Administrative Bureau of the Kwantung Territory
10 in 1935, contradicts the borderline shown on the
11 maps published in 1934, 1926 and 1911 in the same
12 Kwantung Territory, and on the last map published
13 by the Scientific Research Description Department
14 of the East Asia Cultural Society; is that so?

15 A I know that it differs.

16 THE PRESIDENT: When are you going to
17 tender finally the map now being looked at by the
18 witness?

19 COLONEL SMIRNOV: Excuse me, your Honor.

20 I tender in evidence the map published in
21 1932 by the Fuzanbo Printing Office and entitled
22 "Large Maps of China and Manchuria" and the copies
23 therefrom.

24 THE PRESIDENT: Major Blakeney.

25 MR. BLAKENEY: I object to the reception

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1 of the exhibit on the grounds that it is not an
2 official publication and has no probative value.

3 COLONEL MIRNOV: Mr. President, I would
4 like to point out only this; that is, with the
5 help of this witness the defense identified maps
6 taken from some books, the authors of which are
7 unknown and the date of publishing for which is also
8 unknown. I refer to paragraph 4 of the affidavit of
9 this witness where he says precisely "There is a
10 book entitled Holombair" written approximately in
11 1928 -- I stress the word "approximately" -- by an
12 unknown author in the Chinese language.

13 In this case I heard him speak about the
14 equality of the rights of prosecution and defense,
15 because I introduced the map published by the
16 Scientific Research Department of the East Asia
17 Culturual Society and the date of publication of
18 this map is known. Maybe the defense would have the
19 right to make such an objection if the defense
20 produced only official maps, but the defense produced
21 the maps the authors of which are unknown and also
22 the date of publication and the place of publishing.

23 THE PRESIDENT: The Tribunal overrules
24 the objection and admits the document on the usual
25 terms.

1 BY COLONEL SMIRNOV (Continued):

2 Q I would like to deal with some of the
3 evidence given in your affidavit.

4 CLERK OF THE COURT: The map hasn't been
5 identified.

6 COLONEL SMIRNOV: I don't quite understand.

7 CLERK OF THE COURT: Prosecution document
8 2993-B is now marked as received in evidence and
9 will retain the same exhibit number, being 2711,
10 and the copies or excerpt therefrom will receive
11 exhibit No. 2711-A.

12 (Whereupon, the document above
13 referred to retained the same exhibit
14 number, the excerpt therefrom being
15 marked prosecution's exhibit No. 2711-A
16 and received in evidence.)

17 Q In paragraph 4 of your affidavit you mention
18 the Chinese book by an unknown author and of unknown
19 date -- unknown date of publishing. If you were
20 going to give arguments concerning the borderline
21 based on the Chinese material, why didn't you refer
22 to the official Chinese publications -- the official
23 Chinese maps?

24 A Since the end of the war we have lost
25 various maps -- various materials.

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1 COLONEL SMIRNOV: May the witness be shown
2 exhibit 763?

3 (Whereupon, a document was handed
4 to the witness.)

5 COLONEL SMIRNOV: May the copies of the
6 map introduced previously be distributed to the Court?

7 (Whereupon, documents were handed
8 to the Court.)

9 Q Can you read that it is the official
10 China Postal Album, published by the Postal Establish-
11 ment in 1919?

12 A Yes, I understand.

13 Q Now, look at the map itself. Do you see
14 that on this map also the borderline passes to
15 the east of the Halha River?

16 A On this map I do see that.

17 Q Very well. Now, let us deal with your
18 affidavit again. In paragraph 2 of your affidavit
19 you quote a book written by Japanese Kashiwabara
20 Takahisa and Hamada Jun-ichi and published by the
21 Fuzanbo Publishing House in 1919. I would like
22 to know what precisely are you quoting from the book.
23 Where is the end of the quotation? Is it correct
24 that from this book you quote only one sentence and
25 the sentence is as follows: "In those cases where

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1 there are only plains and no mountains or rivers
2 which could have served as a border and on valleys
3 is created for the purpose of marking the borderline."

4 A I referred to the excerpt just read in
5 connection with Obo.
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1 Q Then, the rest of the statement, to the
2 correct that between the provinces of Hsingan-Peisheng,
3 of Manchukuo, and Haluha-miao and Handagaya, of the
4 Mongolian People's Republic, there is no obo for
5 the marking of the border, is your own statement,
6 your invention, isn't it?

7 A It was the result of confirmation on my
8 part.

9 Q Then, the last part of the second para-
10 graph is not a quotation from the book but your own
11 opinions and conclusions, isn't it?

12 A The excerpts from the book are only those
13 portions which referred to the Ching Dynasty.

14 Q Then, you gave the quotation of one sen-
15 tence from this book only for the purpose of abstract
16 interpretation of the meaning of the Mongolian word
17 "obo." I stress the words only "one sentence."

18 A No, that is not so. I referred to obo,
19 the symbolic religious structure, as being the mark-
20 ings in places where there were no trees, forests,
21 mountains, or rivers and pasture land.

22 THE MONITOR: I referred to this question
23 of obo in respect to pasture land where there were
24 no mountains, forests, or rivers to mark any bounda-
25 ries.

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1 Q Then, my statement that you gave this quota-
2 tion only for the abstract interpretation of the Mon-
3 golian word "obd" is correct, isn't it?

4 A No, that is not so. In other words, where
5 there were no mountains and rivers the rivers were
6 made a boundary, and where there were no rivers
7 the obo was used for this purpose. I referred to
8 this portion to emphasize this point.

9 Q Then, you agree with the statement made by
10 the author of the book "Mongolian Topography" to
11 the effect that obo is the symbolical religious
12 structure of the ancient times which the Mongols
13 used for the marking of the boundaries?

14 A No, that is not so. There are various
15 kinds of obo, the symbolic religious structures,
16 and each of these cannot be explained in detail in a
17 few words. If I am permitted to do so, I should like
18 to explain briefly about this obo before going fur-
19 ther with this discussion.

20 THE PRESIDENT: I think we have heard enough
21 about this subject matter.

22 Q In this case we shall return to the question
23 of obo later, but I have my last question to you.

24 Then, you continue to contend that on this
25 sector between Manchuria and Mongolia there were no

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1 obos marking the boundary either in 1938 or 1939 or
2 earlier?

3 A According to the result of my visit to the
4 spot in 1936 and again in 1938, I can say positively
5 with confidence that I confirm that there were no
6 obo or such symbolic religious structures which
7 could be regarded as serving as a boundary.

8 Q Then, you confirm that in the second para-
9 graph of your affidavit?

10 A What portion of paragraph 2 do you mean?

11 Q I will explain later what I mean. I want to
12 know whether you confirm the end of the second para-
13 graph of your affidavit.

14 A Will you read that portion?

15 COLONEL SMIRNOV: Your Honor, may I pass on
16 to these other questions, because the Language Sec-
17 tion hasn't the English test of the affidavit?

18 THE PRESIDENT: Yes, we will pass on to
19 something else.

20 Q Do you know that after the border line in
21 the Khalgin-Gol area was changed in 1935 on the Japa-
22 nese maps the Japanese military officers and the
23 headquarters of the Kwantung Army nevertheless issued
24 for their own use at the headquarters of the Kwantung
25 Army and at the General Staff maps on which the border-

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1 line was clearly shown as passing east of the Halha
2 River?

3 A I shall answer that question. No, I don't
4 know.

5 Q In your affidavit you say that in 1938 you
6 carried out special investigations concerning the
7 boundary line in the Halha River area. Apparently
8 you had means and possibilities to study the maps of
9 Mongolia published by the Kwantung Army Headquarters
10 in 1937. Have you the possibilities to use such
11 materials?

12 A I don't remember very well at the present
13 time, but I believe that I did not obtain such refer-
14 ence materials.

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1 THE PRESIDENT: Why didn't you consult the
2 maps of the Kwantung Government General before you
3 went out to make an investigation?

4 THE WITNESS: Before setting out on my survey
5 trip I had already been, in 1936, on the spot for ten
6 months and I did -- it was not necessary for me to
7 refer to a map.

8 THE PRESIDENT: Oh.

9 COLONEL SMIRNOV: But you were head of the
10 recognizance department which carried activities
11 vis-a-vis Mongolia -- you were the head of this de-
12 partment in 1938, weren't you?

13 THE WITNESS: No, that is not true.

14 THE PRESIDENT: How can you discover the
15 international boundaries without consulting maps unless
16 there are markings of the boundaries on the spot?

17 THE WITNESS: As I have stated in my affidavit
18 concerning this question, from olden times it had
19 been that where there were -- in pasture lands where
20 there existed a mountain or river, it was customary
21 to regard the river as the boundary.

22 THE PRESIDENT: But you ignored your own
23 official publications. That is difficult to understand.

24 THE WITNESS: I shall explain. Before start-
25 ing out on my survey trip I had been on the spot for

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1 ten months and had fully studied the problem and I
2 had confirmed that fact.

3 THE PRESIDENT: That is mere talk. I want
4 you to explain how you could study the problem
5 effectively without consulting maps when you had no
6 markings on the spot?

7 THE WITNESS: I apologize for the lack of
8 clarity in my explanation. In 1936 while I was serving
9 in the Holombair district I had already completed a
10 study of the problem -- a documentary study of this
11 problem. As far as documents and studying were con-
12 cerned I had finished studying the problem.

13 THE PRESIDENT: Did the documents include its
14 own official maps, namely, the maps of the Kwantung
15 Government General?

16 THE WITNESS: I did not use such maps which
17 I felt were unreliable.

18 THE PRESIDENT: Did you consult the maps of
19 the Towa Dobunkai organization?

20 THE WITNESS: No, I did not make use of that
21 map either.

22 THE PRESIDENT: Do you know anything about
23 that organization?

24 THE INTERPRETER: The witness replied that he
25 did not understand the question very well.

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1 THE PRESIDENT: Do you know anything about
2 that organization - the Towa Dobunkai?

3 THE WITNESS: No, I do not know.

4 BY COLONEL SMIRNOV: (Continued)

5 Q Now, let us see whether this question about
6 which we speak now was so very clear for TOJO, Hideki
7 and UMEZU, Yoshijiro in 1937 -- was as clear as it
8 was to you?

9 THE PRESIDENT: Colonel Smirnov, you must
10 exercise your own judgment as to whether it is worth
11 while wasting more time on this witness. Do you think
12 his quality and his information warrants it?

13 COLONEL SMIRNOV: Your Honor, may I be per-
14 mitted to produce one more map which the witness
15 should have known and which from my point of view is
16 very important. May the witness be handed exhibit 719?
17 This is the volume of correspondence received by the
18 War Ministry of Japan in 1938 from the Kwantung Army
19 Headquarters.

20 (Whereupon, a document was handed to
21 the witness.)

22 Q Open the book at the place where the piece
23 of paper is inserted. Have you opened the book?

24 A Yes, I have.

25 Q Follow me, I shall read the covering letter:

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1 from the topographical department of the Kwantung Army
2 Staff.

3 "From TOJO, Hideki, Chief of Staff of the
4 Kwantung Army.

5 "To UMEZU, Yoshijiro, Vice Minister of War.

6 "I herewith submit to you the following items:
7 detailed map of administration of Outer Mongolia."

8 Follow my reading, you will see the map later.
9 Read the covering letter. Have I read the covering
10 letter correctly?

11 A Yes, you did.

12 Q Do you see the stamp on this covering letter
13 which is "Army Manchuria Secret No. 158"?

14 A Isn't the number 56? Yes, I have found it.

15 Q Then is it correct that this map was sent
16 from TOJO, Hideki, the then Chief of Staff of the
17 Kwantung Army to UMEZU, Yoshijiro, the then Vice
18 Minister of War?

19 A Yes, I believe it is so.

20 Q Now, let us see the map itself, unfold it.

21 THE PRESIDENT: Major Blakeney.

22 MR. BLAKENEY: I should like to point out
23 the document handed to the witness by defense counsel,
24 purporting to be a map from exhibit No. 719, is
25 certified on 22 May 1947. I don't understand what that

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1 means but it can't be exhibit 719 if that is the date
2 of it.

3 THE PRESIDENT: Only the excerpt is certified.

4 MR. BLAKENEY: It bears no resemblance to the
5 map itself. If it is an excerpt, it has been consider-
6 ably altered and I think it should be offered as a
7 separate exhibit. It is going to introduce considerable
8 confusion, I submit, if this excerpt is to be referred
9 to as exhibit 719 and a totally different map intro-
10 duced also referred to by that number.

11 THE PRESIDENT: Look into the matter during
12 the recess.

13 We will recess for fifteen minutes.

14 (Whereupon, at 1045, a recess was
15 taken until 1100, after which the
16 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Blakeney.

4 MR. BLAKENEY: I wish to point out to the
5 Tribunal that the document just handed to defense
6 counsel and presented to the witness and referred to
7 as exhibit 719 is not a document already in evidence.
8 It is a different excerpt from exhibit 719 for iden-
9 tification, which no member of the defense staff, so
10 far as I know, has ever before seen, which was not
11 admitted in evidence so far as I know, and which has
12 only now been handed to us for the first time. That
13 is to say, it is entirely different from exhibit
14 No. 719-A, which was the one admitted in evidence.
15 And I am going to object to the reception in evidence
16 of this excerpt at this time for two reasons: First,
17 non-compliance with the rule of service; and secondly,
18 that the excerpt as presented is misleading. It is
19 a small excerpt from a large map, which large map shows
20 upon inspection that it was compiled by a Russian.

21 I also wish to submit to the board of language
22 arbiters the question whether the title of the excerpt
23 now newly presented is correctly translated.

24 COLONEL SMIRNOV: Your Honor, exhibit 719 is
25 a volume of correspondence between the Japanese War

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1 Ministry and the Kwantung Army Headquarters for 1938.
2 On seeing this book, we can find that it is very large
3 book containing many letters which were filed by the
4 War Ministry in order of their reception from the
5 Kwantung Army. It contains different secret documents
6 which were received by the War Ministry from the
7 Kwantung Army during the whole year of 1938.

8 The volume as a whole was tendered for iden-
9 tification. Some excerpts from other documents con-
10 tained in this volume were introduced into evidence
11 earlier. Now I want to offer in evidence the map
12 published in 1937 by the Kwantung Army Headquarters, and
13 the covering letter attached to the map written by
14 TOJO, Hideki, the then Chief of Staff of the Kwantung
15 Army, addressed to UMEZU, Yoshijiro, the then Vice-
16 Minister of War. That is all I wanted to do; that is,
17 to introduce in evidence separate excerpts from this
18 volume of correspondence.

19 Now, as to the question of the Russian author
20 of the map, of whom my colleague spoke. As it is
21 translated by us, the title of the map is as follows:
22 "1937, December, Prepared by the Kwantung Army Staff,
23 original drawn up by Simkov in 1934." Simkov is a
24 Russian name. But I am not interested in the question
25 of nationality of the map expert of the Kwantung Army

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1 Staff who was in the service of the Japanese. I
2 introduce this map for the purpose of proving that it
3 was drawn by the Kwantung -- prepared by the Kwantung
4 Army Staff in 1937 and was published in 1937, and also
5 for the purpose of proving that the border line passed
6 east of the Halha River and that such border line was
7 shown on a secret map of the Kwantung Army Staff even
8 in 1937.

9 In my submission, it doesn't matter whether
10 this map was drawn or prepared by a Russian, a German,
11 a Chinese or a man of some other nationality. In this
12 case it is important that it is the official secret
13 map of Japanese publication and published by the
14 Kwantung Army Staff.

15 MR. BLAKENEY: I point out to the Tribunal
16 that as yet there is not a trace of evidence whether
17 the map was published by the Kwantung Army or someone
18 else. The small excerpt now being tendered shows
19 nothing about its origin, by whom it was drafted, or
20 by whom it was published, if it was published. It is
21 for that reason that I am objecting to its reception
22 unless the entire map be tendered so that the Tribunal
23 may see the entire map and draw for itself either these
24 inferences which counsel is drawing or those which we
25 shall later submit should be drawn.

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1 THE PRESIDENT: Undoubtedly we expect the
2 originals now before the witness to be tendered as well;
3 the map and the covering memorandum.

4 COLONEL SMIRNOV: I can only point out, your
5 Honor, that in exhibit 719 there is not only one original
6 of the map but eight original copies of the map sent
7 by the Kwantung Army Staff to the War Ministry.

8 THE PRESIDENT: We want the documents tendered
9 for identification and marked exhibit 719 for that
10 purpose to be tendered as well as the excerpt; that
11 part of exhibit 719 for identification that is relevant,
12 of course.

13 COLONEL SMIRNOV: Your Honor, I tender in evi-
14 dence the covering memorandum written by TOJO, Hideki,
15 Chief of Staff of the Kwantung Army, and addressed to
16 UMEZU, Yoshijiro, the Vice-Minister of War, together
17 with the map attached to the latter which is contained
18 in exhibit 719.

19 THE PRESIDENT: That document and the preceding
20 document to which objection is raised are admitted on
21 the usual terms.

22 CLERK OF THE COURT: The original map attached
23 to exhibit 719 is now marked as received in evidence
24 and will be given exhibit No. 719-B, and the excerpts
25 therefrom will receive exhibit No. 719-C.

1 (Whereupon, the documents above re-
2 ferred to were marked prosecution exhibits
3 No. 719-B and No. 719-C respectively, and
4 received in evidence.)

5 COLONEL SMIRNOV: May the witness be shown
6 again the original of the map so that he could read
7 the inscription on this map?

8 (Whereupon, a document was handed
9 to the witness.)

10 THE PRESIDENT: Mr. Lynch, you must give a
11 number to the memorandum also.

12 CLERK OF THE COURT: The memorandum attached
13 to the excerpt from 719 will receive exhibit No. 719-D.

14 (Whereupon, the document above re-
15 ferred to was marked prosecution exhibit
16 No. 719-D and received in evidence.)

17 THE PRESIDENT: I should announce that the
18 accused MUTO and the accused KAYA are, with permission
19 of the Tribunal, conferring with their counsel, and will
20 continue to do so until the end of this session at
21 12 noon.

22 Colonel Smirnov.

23 BY COLONEL SMIRNOV (Continued):

24 Q Mr. Witness, unfold the map and pay attention
25 to inscriptions and markings on this map. I read the

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1 title of this map. Follow me. "Detailed Map of Admin-
2 stration of Outer Mongolia." Is that correct?

3 A Yes.

4 Q Now, follow my reading the inscription at the
5 left bottom corner of the map, and the legend in the
6 same corner. "1937 December. Prepared by the Kwan-
7 tung Army Staff. Drawn up by Simkov in 1934. Scale
8 1:4,000,000." Have I read the inscription correctly?

9 A Not the Kwantung Army Headquarters, but the
10 Kwantung Army General Staff.

11 Q Then the Kwantung Army Staff is correct?

12 A Yes.

13 Q Then it is correct that this map was prepared
14 in 1937 in December by the Kwantung Army Staff?

15 A This is a map which was copied by the General
16 Staff of the Kwantung Army.

17 Q I ask you whether it is said on the map that
18 it was prepared by the Kwantung Army Staff? I ask you
19 to read only Japanese inscription.

20 A It is written that it was made by the Kwantung
21 Army Headquarters -- General Staff.

22 Q Then do you see that the border on this map
23 is marked by a broken line, consisting of dashes and
24 crosses according to the legend of this map; is that
25 correct?

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1 A Yes.

2 Q Now, find the Buirnor Lake and the Halha River.

3 A Yes, I found it.

4 Q Then do you see that according to this map
5 also the border line passes east of the Halha River
6 and not on the river itself?

7 A Yes, I do.

8 Q Is that correct?

9 A Yes.

10 THE PRESIDENT: Really we don't want his help
11 to that extent.

12 COLOMEL SMIRNOV: Then, your Honor, taking into
13 consideration your remark that there is no need to
14 cross-examine this witness for a long time, I conclude
15 by this my cross-examination.

16 I would like only to draw the Tribunal's atten-
17 tion to the quality of the material presented by the
18 defense attached to the affidavit of this witness.

19 THE PRESIDENT: All I suggest to you is there
20 is no need to ask certain questions.
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1 COLONEL SMIRNOV: Your Honor, I would like
2 to point out only that between the Japanese version
3 of the defense document 1601-A and the English ver-
4 sion of the same document, there is a striking differ-
5 ence which is quite inadmissible. In the English
6 version of this document, the border line passes
7 in accordance with the Soviet-Mongolian contentions,
8 that is, east of the Khalhar River, and in the Japa-
9 nese version it is impossible to find out how does
10 this border line pass. If I follow the tactics
11 adopted by my learned colleague, I would have cross-
12 examined this witness for three hours on this topic,
13 but, as I only want to save time, I ask my colleague
14 only to clarify and to check this matter for dis-
15 crepancies, which is probably due to inaccurate
16 copying of the material.

17 That concludes my cross-examination.

18 THE PRESIDENT: Major Blakeney.

19 MR. BLAKENEY: If I had followed the tactics
20 of my colleague, I should now testify about his map,
21 instead of which, however, I wish to ask leave to re-
22 serve my reexamination until such time as we shall
23 have been served with copies and the Tribunal pro-
24 vided with copies of the map, exhibit 719-B.

25 THE PRESIDENT: You are entitled to a reasonable

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time to study that map.

MR. BLAKENEY: I therefore request, if I may, that the witness be stood down until those copies shall have been distributed.

THE PRESIDENT: By a majority, the Court would allow you until Monday to consider that new material before you proceed to reexamine the witness.

MR. BLAKENEY: May he be stood down, then?

THE PRESIDENT: The witness is released on the usual terms until Monday morning next.

(Whereupon, the witness was excused.)

MR. BLAKENEY: I now offer in evidence defense document 1695, a telegram from the charges d'affaires in Moscow to the Secretary of State, dated the 11th of August, 1938, and reporting on the Soviet budget.

THE PRESIDENT: General Vasiliev.

GENERAL VASILIEV: If the Tribunal please, I object to this document on the ground of its irrelevancy. The contents of this document, in themselves, do not call for a special remark, but I must say I did not have the opportunity of checking the correctness of the data given therein. But, introduction of this document by the defense in connection

1 with this case is biased, and it, so to say, studies
2 the inner life of the Soviet Union from a special
3 point of view. The purpose of the introduction of
4 this document is irrelevant to the issues involved
5 in this case. If the way chosen now by the defense
6 were followed, then files of paper would be heaped
7 up without any use and there would be no progress
8 of the case whatsoever. Therefore, I ask the Tri-
9 bunal to reject the document.

10 THE PRESIDENT: Major Blakeney.

11 MR. BLAKENEY: The document is relevant as
12 one item showing the increase in Soviet military
13 expenditures and preparedness. I need not again
14 repeat that the issue of the threat of Soviet mili-
15 tary might was ever present, as shown by the evi-
16 dence, in the minds of the Japanese Government,
17 Army, and people. This document relates, of course,
18 to only one particular period of time in connection
19 with Soviet military preparedness. It happened to
20 be all that we had immediately available when other
21 evidence, which we had expected to be able to pro-
22 duce, suddenly proved to be unavailable.

23 THE PRESIDENT: By a majority, the Court
24 overrules the objection and admits the document.

25 CLERK OF THE COURT: Defense document 1695

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2 the inner life of the Soviet Union from a special
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19 with Soviet military preparedness. It happened to
20 be all that we had immediately available when other
21 evidence, which we had expected to be able to pro-
22 duce, suddenly proved to be unavailable.

23 THE PRESIDENT: By a majority, the Court
24 overrules the objection and admits the document.

25 CLERK OF THE COURT: Defense document 1695

1 will receive exhibit No. 2712.

2 (Whereupon, the document above re-
3 ferred to was marked defense exhibit No.
4 2712 and received in evidence.)

5 MR. BLAKENEY: I shall read only excerpts
6 relating to the budget of the Peoples Commissariats
7 for the Army and Navy and Internal Affairs which
8 last is, as shown by exhibit 2681, to maintain
9 military forces in the Far East. I read the first
10 sentence at the beginning:

11 "According to the published accounts of
12 the proceedings of the opening joint session of
13 the Supreme Soviet which took place yesterday even-
14 ing and which was devoted to the budget, the only
15 reference to the Far Eastern controversy was made
16 by the Commissar for Finance Zverev in presenting
17 the military items of the budget."

18 I skip now to the third paragraph.

19 "The principal increases of expenditures
20 under the State budget not including the local bud-
21 gets are as follows in compliance last year's State
22 budget.

23 "(One) The Peoples Commissariats for the
24 Army and Navy by nine thousand 563 million rubles or
25 54.7 per cent.

1 "(Two) The Peoples Commissariats for In-
2 ternal Affairs by one thousand 325 million rubles
3 or 54.2 per cent."

4 And from there, I skip to the last paragraph.

5 "Zverev emphasized the fact that exceptional
6 increases of expenditures for defence purposes are
7 being made by the capitalist countries particularly
8 by the 'Fascist states' and in pointing out that
9 Soviet policy is directed 'not only toward the
10 defence of the Soviet land but also of the workers
11 of all countries' declares that the increased appro-
12 priations for Soviet defence will still further
13 strengthen the power of the mother land so that
14 'woe will be to him who endeavors to test the
15 strength of Soviet arms.'"

16 With the exception of such matters as have
17 been reserved, that concludes my presentation, and
18 I now yield to Mr. Cunningham who will present
19 additional evidence relating to the foregoing part
20 of the Russian phase.

21 THE PRESIDENT: Mr. Cunningham.

22 MR. CUNNINGHAM: If the Tribunal please, I
23 have some additional documents concerning the Anti-
24 Comintern Pact, which were not processed in time to
25 present them to the Tribunal before the end of the

1 evidence in that matter.

2 I now offer in evidence defense document
3 1316, excerpt taken from interrogation of J. von
4 Ribbentrop on 20 September 1945 at Neurnberg. The
5 interrogator is Colonel Brundage, U. S. Army. In
6 this interrogation von Ribbentrop explains that
7 the Anti-Comintern Pact was an ideological pact
8 directed against communism, that Germany tried to
9 get Great Britain to join, and that Germany con-
10 sidered the improvement of relations with Great
11 Britain and France as far more important than the
12 establishment of a friendly relation with Japan.
13 This is taken from a copy of the interrogation. The
14 original is not available, being on file in Neurn-
15 berg.

16
17 MR. COMYNS CARR: If it pleases the Tri-
18 bunal, we object to this document. A very minor
19 but not unimportant objection to it is that all the
20 key words, which would make it intelligible, are in
21 German, a language which not all of us understand.
22 No doubt, at Neurnberg, certain German words became
23 familiar currency in the course of the investigation,
24 just as here certain Japanese words have.

25 THE PRESIDENT: If Ribbentrop conversed in
English but occasionally used a German term, we must

1 have the German term.

2 MR. COMYNS CARR: On page 1, there is
3 frequent reference to the word "Weltanschauungs,"
4 the precise meaning of which is unknown to me,
5 and on page 3, there is reference to something called
6 the "Reppolo policy" in the middle, and also fre-
7 quent references to the word "Weltauffassungen".
8 Those words frequently occur in the document, and
9 unless one knows what they mean, the whole thing is
10 unintelligible.

11 THE PRESIDENT: We must be sure they are
12 correctly spelled in German. But, did Ribbentrop
13 converse in German or English? If he conversed in
14 German, we should have a complete translation in
15 English.

16 MR. COMYNS CARR: I am informed that he
17 conversed in German, and this is an imperfect trans-
18 lation into English.

19 But, your Honor, my much more important
20 objection is that Ribbentrop's views in September,
21 1945, as to what had been German intentions in 1936
22 in entering into a treaty, which speaks for itself,
23 are irrelevant and obviously self-serving.

24 THE PRESIDENT: Mr. Cunningham.

25 MR. CUNNINGHAM: If your Honor please, I

1 wish to assure the Tribunal that Ribbentrop spoke
2 perfect English and that in all my conferences with
3 him, he never used by one German word, and that was
4 this one, because there was no English equivalent.

5 THE PRESIDENT: Was this particular con-
6 ference or interrogation in English or in German?

7 MR. CUNNINGHAM: The interrogation is there
8 in its full context, and I will assure you that it
9 was in English because I am sure that neither Smith
10 Brookhart nor Colonel Brundage understood German.
11 I am satisfied there there was no interpreter there
12 and no need for one.

13 On the second proposition, the prosecutor
14 says the document speaks for itself, the Anti-
15 Comintern Pact which this evidence bears upon. If
16 that is so, then that proves our case, because it is
17 the contention, as I understood it, of the prosecution
18 that this pact meant something that it did not say.
19 That was, at least, the language I understood when
20 the Court asked the prosecutor for his interpretation
21 of what he expected to prove under the Anti-Comintern
22 issue.

23 THE PRESIDENT: Let us keep to the first
24 issue. Was this document tendered at the Neurnberg
25 trial?

1 MR. CUNNINGHAM: The Anti-Comintern Pact
2 and its context was not a matter of issue at the
3 Neurnberg trial, and this is a preliminary inves-
4 tigation into the Anti-Comintern Pact, one of
5 various investigations which formed the basis upon
6 which they formed the issues in the Neurnberg trial.

7 THE PRESIDENT: It appears from the affidavit
8 of John Amen, who is an officer of the United States
9 Army, that the interrogation was conducted in English,
10 and the interrogation was on oath.

11 MR. CUNNINGHAM: That is all I have to say,
12 your Honor, except that the Language Section can
13 very easily give you an interpretation of the word
14 which means "ideology" and "ideological," if you
15 want a literal interpretation of it.

16 THE PRESIDENT: Our Language Section does
17 not contain any Germans or persons with a knowledge
18 of German, as far as I am aware.

19 MR. COMYNS CARR: Nor am I prepared to
20 accept my friend's translation.

21 THE PRESIDENT: Judges are not allowed to
22 translate these things themselves no matter how
23 expert in the language. They must have evidence.

24 MR. COMYNS CARR: Your Honor, in reply to
25 one other remark of my friend, where he said that

1 MR. CUNNINGHAM: The Anti-Comintern Pact
2 and its context was not a matter of issue at the
3 Neurnberg trial, and this is a preliminary inves-
4 tigation into the Anti-Comintern Pact, one of
5 various investigations which formed the basis upon
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18 of German, as far as I am aware.

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20 accept my friend's translation.

21 THE PRESIDENT: Judges are not allowed to
22 translate these things themselves no matter how
23 expert in the language. They must have evidence.

24 MR. COMYNS CARR: Your Honor, in reply to
25 one other remark of my friend, where he said that

1 the pact portended something more than it says,
2 quite true. From the point of view of the Japanese
3 it is material to know what the Japanese intentions
4 were by such evidence as can be presented.

5 THE PRESIDENT: It is twelve now. We'll
6 hear you after adjournment. We will adjourn until
7 half-past one.

8 (Whereupon, at 1200, a recess was
9 taken.)

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1 AFTERNOON SESSION

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3 The Tribunal met, pursuant to recess, at 1330,
4 Hon. R. B. Pal, Member from the Government of India,
5 not sitting.

6 MARSHAL OF THE COURT: The International
7 Military Tribunal for the Far East is now resumed.

8 THE PRESIDENT: Mr. Comyns Carr.

9 MR. COMYNS CARR: Your Honor, I had almost
10 finished. I was just submitting that whereas evidence
11 as to what was in the mind of the Japanese with respect
12 to the Anti-Comintern Pact is relevant and material
13 and may be proved from German as well as Japanese
14 sources, evidence as to what was in Ribbentrop's mind
15 is irrelevant even if it were contemporary and not
16 made in an interrogation after the event and even if
17 it were intelligible, which it is not.

18 THE PRESIDENT: Mr. Cunningham.

19 MR. CUNNINGHAM: If your Honor please,
20 in spite of the fact that that is Mr. Carr's
21 second argument on this objection that he has made,
22 I want to say that over my most strenuous objec-
23 tions last fall these documents which emanated
24 from Germany expressing the thought of the German
25 leaders concerning the questions involved in this

1 case were admitted. This document is introduced
2 for the purpose of explaining and showing the
3 background of those documents which have been
4 the basis of establishing the Japanese-German
5 relations in this Tribunal. I believe it is
6 relevant, highly material, and I believe after
7 listening you will find it very significant.

8 THE PRESIDENT: By a majority the Court
9 upholds the objection and rejects the document.

10 MR. CUNNINGHAM: Then I move to strike
11 from the record all the documents which emanated
12 from J. Von Ribbentrop in Germany which form a
13 basis of the German-Japanese relations in this
14 trial, a list of the exhibits to be tendered at
15 a subsequent date.

16 THE PRESIDENT: This may be a mere ex-
17 pression of resentment, Mr. Cunningham; I do not
18 know. But there should be a notice of such a
19 motion. Another Member of the Court expresses
20 his reaction in much stronger terms.

21 MR. CUNNINGHAM: Well, your Honor, such
22 things do not deter me. I remember distinctly
23 that I made the same objections which Mr. Carr
24 made to these documents when they were being
25 introduced, and as usual --

1 THE PRESIDENT: It depends on how the
2 Tribunal is constituted from time to time. We
3 have ten Members this afternoon. If we had
4 eleven the result may have been different.
5 Tomorrow, or Monday, or some other sitting day
6 we may have nine, and we may have a different
7 result. You must take the verdict of the
8 majority. As an experienced counsel you must be
9 accustomed to getting adverse decisions.

10 MR. CUNNINGHAM: Your Honor, this ex-
11 perience alone has schooled me in that.

12 I was only half way through my motion
13 when the light went on.

14 THE PRESIDENT: Well, we will not receive
15 your motion this afternoon, Mr. Cunningham. Just
16 think it over.

17 MR. CUNNINGHAM: I now offer in evidence
18 defense document 613-A(11), which is an excerpt
19 from the interrogation of MATSUOKA, Yosuke, at
20 Sugamo Prison on the 12th of March, 1946, in
21 which MATSUOKA emphasized the efforts made by
22 Japan to prevent in Asia the spread of communism.

23 THE PRESIDENT: Mr. Comyns Carr.

24 MR. COMYNS CARR: Your Honor, as far as I
25 am aware, the prosecution did not introduce in

1 evidence any part of the interrogation of
2 MATSUOKA, and in my submission, that being so,
3 it cannot be introduced by the defense. At all
4 events its introduction is not covered by any
5 ruling given by the Tribunal up to the present
6 time. That is the only objection we have to
7 this document, your Honor.

8 THE PRESIDENT: According to the strict
9 rules of evidence it would not be admissible, but
10 they may or may not be applied.

11 MR. CUNNINGHAM: Might I suggest that
12 the matter of relevance and probative value seem
13 to have been the test for evidence in the past,
14 and I suggest that this material that MATSUOKA
15 says would be relevant, and it certainly would
16 have probative value -- one of the men in the
17 Cabinet. I suggest that your Honors well know
18 that MATSUOKA was one of the defendants and what
19 he says would have some bearing definitely on the
20 relations of the other defendants.

21 THE PRESIDENT: By a majority the ob-
22 jection is upheld, and the document rejected.

23 MR. CUNNINGHAM: I now offer in evidence
24 defense document 1400-T(2), an excerpt from
25 Foreign Relations of the United States, Japan

1 1931-1941, Vol. II, page 2-3, which is a telegram
2 sent by Ambassador Grew from Tokyo on 18 May 1939
3 to the Secretary of State in Washington, concern-
4 ing his conversation with Foreign Minister ARITA.
5 ARITA explained to Ambassador Grew that Japan did
6 not join into the camp of totalitarian nations in
7 opposition to the democratic nations, and Grew
8 found that no substantial opposition in the
9 Japanese Government to this view of ARITA's did
10 exist.

11 THE PRESIDENT: Mr. Comyns Carr.

12 MR. COMYNS CARR: Your Honor, in my sub-
13 mission, it is not proper for a running commentary
14 to state the contents of a document before it has
15 been admitted.

16 THE PRESIDENT: There is no objection to a
17 brief statement of the purpose of the admission of
18 the document. Such statements were indulged in
19 freely by the prosecution.

20 MR. COMYNS CARR: Your Honor, the document
21 consists of two paragraphs. The first is a quotation
22 from a statement by a person not named. The second
23 is an expression of Mr. Grew's opinion as to the
24 truth of another statement made by ARITA and as to
25 the prospects of stability of the then Japanese

1 Cabinet. In our submission neither carries the
2 case any further.

3 MR. CUNNINGHAM: I agree, your Honor,
4 that perhaps Mr. Carr and I could take the time
5 and explain this document in our argument, but
6 I should think it would be better to receive
7 the statement of what Mr. Grew said, and this
8 book has been the source of a great deal of the
9 prosecution's evidence one way or other, and I
10 think we ought to have the right to take ex-
11 cerpts from it to prove our side of the case.
12 It seems only reasonable.

13 THE PRESIDENT: By a majority the
14 objection is upheld except as to the first sen-
15 tence in the second paragraph.

16 MR. CUNNINGHAM: We withdraw the document.

17 I now offer defense document 502, excerpt
18 No. 9, which is a paragraph from Robert Craigie's
19 book. We only wish to show by this document that
20 Germany was not cooperating with Japan even though
21 they had an anti-comintern pact.

22 THE PRESIDENT: Mr. Comyns Carr.

23 MR. COMYNS CARR: May it please the
24 Tribunal, this document has already been tendered
25 and rejected by the Tribunal at page 20,516 of the

1 record, and I ask that it be treated in the same
2 way when it is tendered a second time.

3 THE PRESIDENT: Mr. Cunningham.

4 MR. CUNNINGHAM: I submit that the
5 document suggests what I have stated, and I ask
6 that it be received in evidence.

7 THE PRESIDENT: I have received no
8 intimation that the ruling should be changed
9 from any of my colleagues. The objection is
10 upheld, and the document again rejected.

11 MR. CUNNINGHAM: I now offer in evidence
12 document 1626, an excerpt from the Japan Year
13 Book 1941-1942, pages 188 to 191, which contains,
14 among other things, the statement of the Japanese
15 Foreign Office on the 25th of November, 1936, and
16 on the 6th of November, 1937, concerning the con-
17 clusion of the Anti-Comintern Pact between Japan
18 and Germany and the Tri-Partite Agreement against
19 the comintern between Japan, Germany, and Italy,
20 respectively.

21
22 The purpose of tendering this evidence is
23 to show that the menace of the comintern activi-
24 ties all over the world, especially in China and
25 Japan, compelled Japan to enter into this agree-
ment first with Germany and then with Italy,

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23 to show that the menace of the comintern activi-
24 ties all over the world, especially in China and
25 Japan, compelled Japan to enter into this agree-
ment first with Germany and then with Italy,

1 Manchukuo, Hungary, and Spain.

2 THE PRESIDENT: Mr. Comyns Carr.

3 MR. COMYNS CARR: May it please the
4 Tribunal, the prosecution objects to this document,
5 which is a long argumentative, narrative account
6 of matters leading up to the Anti-Comintern Pact
7 and the adhesion of Italy, Manchukuo, and Hungary
8 to it. As to the Foreign Office statements said
9 to be contained in it, if those are material, in
10 my submission they should be proved in the ordinary
11 way, separately, without all this comment.
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1 MR. CUNNINGHAM: Your Honors, this is one
2 document which we didn't believe the prosecution
3 would object to, for the reason that over our objec-
4 tion a vast amount of material in this case has been
5 introduced against the defendants from this very
6 source.

7 THE PRESIDENT: By a majority the Court
8 upholds the objection and rejects the document.

9 MR. CUNNINGHAM: I now offer defense docu-
10 ment 1611, which is the constitution and rules of
11 the Communist Internationale. No one can understand
12 the real significance of the Anti-Comintern Pact and
13 the vital necessity at the time for such an agree-
14 ment without having first an understanding of the
15 organization, purposes, and program for world revolu-
16 tion of the Communist Party.

17 THE PRESIDENT: Mr. Comyns Carr.

18 MR. COMYNS CARR: May it please the Tribunal,
19 the prosecution objects to this document for two
20 reasons. The first, a minor reason, is that the
21 certificate is improper and misleading. It says
22 that the document is an official document of the
23 Japanese Foreign Office. It obviously is not. It
24 is a piece of paper obtained by the Japanese Foreign
25 Office from some source, unnamed, which the Japanese

1 Foreign Office choses to keep in its archives. It
2 may be, and there have been occasions when it has
3 been, relevant to prove the fact that the Japanese
4 Foreign Office chose to preserve some document not
5 its own amongst its archives. That fact may amount
6 to something in the nature of an admission.

7 The major objection is that the rules of
8 the Communist Internationale are irrelevant for any
9 purpose of this inquiry. It deals in considerable
10 detail with the organization and voting rights of
11 various parties in this body. There is only one
12 paragraph, the first, which purports to set out its
13 objects, which, in our submission, are also immater-
14 ial for the purpose of this inquiry.

15 MR. CUNNINGHAM: In answer to the first
16 objection, I would say that the only question is
17 whether or not this is or is not the constitution
18 and rules of the Communist Internationale, and cer-
19 tainly there is no question about that.

20 On the second proposition, if any one of
21 the democratic nations could read this document
22 without blushing at the world-wide program of the
23 Communist Party, then I would withdraw the document
24 without even presenting it.

25 THE PRESIDENT: That is a test that can never

1 be applied, in the nature of things.

2 MR. CUNNINGHAM: If the question in this
3 case is whether or not the Japanese leaders were
4 justified in executing the Anti-Comintern Pact,
5 this document is the answer.

6 THE PRESIDENT: By a majority the Tribunal
7 upholds the objection and rejects the document.

8 MR. CUNNINGHAM: I now present defense
9 document 1530, which emphasizes that the 7th Con-
10 gress of Comintern, in 1935, advocated the following:

11 "1. Establishment of a united front on
12 an international scale.

13 "2. It advocated revolutionary tactics.

14 "3. It seeks to promote economic and politi-
15 cal penetration into wider horizons.

16 "4. It suggests at 'D', at page 3, 'Inter-
17 national Communist Movements', this should permit a
18 resistance movement as contemplated in the Anti-Com-
19 intern Pact.

20 "These are the facts which we propose to
21 prove by this revealing document, and this, in my
22 judgment, is the cause of the effect, the cause be-
23 ing the resolution of the 7th International Congress
24 and the effect being the Anti-Comintern Pact.

25 THE PRESIDENT: Mr. Comyns Carr.

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21 prove by this revealing document, and this, in my
22 judgment, is the cause of the effect, the cause be-
23 ing the resolution of the 7th International Congress
24 and the effect being the Anti-Comintern Pact.

25 THE PRESIDENT: Mr. Comyns Carr.

1 MR. COMYNS CARR: Your Honor, we object to
2 this document.

3 In the first place, it has no certificate
4 at all and no means of identifying its origin --
5 that was served upon us, at all events. But the
6 major objection is irrelevance.

7 It offends against the ruling of the Tribu-
8 nal, already given, with regard to similar documents
9 dealing with communist or any other ideology. There
10 is no reference anywhere to Japan, nor any sugges-
11 tion of making war upon anybody. On the contrary, it
12 appears to be an appeal against the danger of out-
13 break of war due to German fascism, which is the
14 subject matter of paragraph 6, on page 5, the rest
15 being merely a call to communist parties to strengthen
16 their political position.

17 MR. CUNNINGHAM: I suggest that this is a
18 preliminary of three documents, which definitely
19 shows that the comintern set out to cause world
20 revolution, and is one of the three; and we will
21 later show by our evidence that that actually took
22 place in certain parts of the world and in spite of
23 the Anti-Comintern Pact. These documents, all three,
24 should be read together -- 1530, 1531, and 1532.
25 If this evidence is irrelevant and immaterial, I

1 should like to have a direction from the Tribunal
2 as to what it considers evidence material and rele-
3 vant to meet this issue of the Anti-Comintern Pact.
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1 THE PRESIDENT: Like every other court
2 we will wait until the evidence is tendered and
3 then will say whether it is admissible or not.

4 MR. CUNNINGHAM: Well, your Honor, in
5 response to that: As I understood in the prosecution's
6 case the Court accepted the evidence with the under-
7 standing that at the end of the case they will
8 consider all the evidence and determine then whether
9 or not it had any probative value; and that is the
10 real test.

11 THE PRESIDENT: That is not correct, as the
12 Court frequently rejected evidence tendered by the
13 prosecution.

14 A Member of the Court would like to know
15 whether you have any authentication of this particular
16 document, Mr. Cunningham?

17 MR. CUNNINGHAM: 1531 is a book from which
18 all three of these documents were taken.

19 THE PRESIDENT: By a majority the Court
20 upholds the objection and rejects the document.

21 MR. CUNNINGHAM: Defense document 1532
22 is another resolution adopted by the 7th World
23 Congress of the Communist International. Although
24 this document contains some harmful statements to the
25 cause of the defense, it also offers some justification

1 for the agreement between nations to curtail the
2 spread of communism. It gives both sides of the
3 picture which the Tribunal must judge sooner or later.
4 In its final analysis I believe the document has
5 probative value and makes very interesting observations.
6 It offers cause for democracies to stop and think
7 today as it aroused the nations named at the time.
8 I offer defense document 1532.

9 THE PRESIDENT: Mr. Comyns Carr.

10 MR. COMYNS CARR: If it please the Tribunal,
11 my friend's last remark reveals the real purpose of
12 the introduction of these documents; namely, to take
13 part in a propaganda issue at the present day.

14 All the objections which I took to the last
15 document apply to it, except that there are two para-
16 graphs in which there is reference to Japan. They
17 are the second paragraph on page one and the last
18 paragraph on page six. In each case they contain
19 an appeal to resist Japanese aggression in Manchuria
20 and China, which, in our submission, as we made before,
21 could afford no possible justification for further
22 aggression.

23 MR. CUNNINGHAM: Well, I presumed that those
24 two references would attract the attention of the
25 prosecutor and he would have no objection to them,

1 but I am interested in the admission of the parts
2 of the document which are favorable to the defense
3 and which gives the Court both sides.

4 If the learned prosecutor feels that the
5 information which the nations of today are putting
6 out against the spread of communism is pure propaganda,
7 then I should like to know what his definition of
8 propaganda is because I consider it a very real
9 project. And, as an American, I take the absolute
10 opposite view to his British view.

11 THE PRESIDENT: I do not know him to express
12 any British, American, or any other view.

13 By a majority the Court upholds the objection
14 and rejects the document.

15 MR. CUNNINGHAM: I now offer defense document
16 1533, which is one of the resolutions of the 7th
17 Convention of the Comintern. One of the forerunners
18 of the Anti-Comintern Pact it shows; one, that the
19 communists were pledged to carry out a program of
20 deportation of capitalistic elements and the extermin-
21 ation of rich farmers as a class; two, offenses
22 which are considered crimes against humanity under
23 the Charter of this Tribunal. I refer to Article V,
24 Section C. This in itself is sufficient reason
25 for the Anti-Comintern Pact if read in the light of

1 world events. It shows specifically that world
2 revolution was planned.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: If it please your Honor,
5 this document is subject to all the same objections
6 as the first one. There is no reference to Japan
7 in particular in it. It deals almost entirely with
8 internal affairs in the USSR and puts forward a
9 picture and claim to the success of the government
10 of that country in carrying out its objects.

11 In addition, it points to the danger of
12 a world war being instituted by Fascist Governments,
13 and makes an appeal to its readers for such a thing
14 to be prevented.

15 Again, there is no certificate.

16 MR. CUNNINGHAM: I submit, that this document
17 bears all the earmarks that I gave it and I think
18 that if read in the light of the Anti-Comintern
19 Pact, that it certainly justifies the action taken
20 in that document.

21 THE PRESIDENT: By a majority the Court
22 upholds the objection and rejects the document.

23 MR. CUNNINGHAM: I now present defense document
24 1531 which is one of the resolutions of the 7th
25 Convention of the Comintern, shows on its first page

1 that it proposes a world wide program toward the
2 spread of communism.

3 This resolution fosters class prejudice
4 which in itself is undemocratic and contrary to good
5 government as we know it.

6 It advocates anti-imperialism which struck
7 directly at Japan.

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THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: The prosecution objects to this document for the same reasons as before. To this there is a certificate which in our submission is misleading for the same reasons that I gave with regard to the last document that had a certificate. It is propaganda against Facism and against the dangers of a world war likely to be started by Fascist governments. The only reference I can see to Japan is the first paragraph on page 13 which, like the previous document which contained a reference to Japan, is an appeal to resist Japanese Imperialism, in China.

MR. CUNNINGHAM: I submit that the argument of counsel for the prosecution has increased the relevancy of this document in that it shows that both powers, the Fascists and Communists, were preparing their claims, both claiming them defensive measures and that the Anti Comintern Pact was a defense against the Communist party. The Seventh International Congress taking place in 1935 set up its program and the Anti Comintern Pact executed in 1936 was a defense against that, getting right back to the proposition of cause and effect.

THE PRESIDENT: By a majority the Court

1 upholds the objection and rejects the document.

2 MR. CUNNINGHAM: The next document -- I would
3 like to have you send out and get 1571 so we can get
4 it in a few minutes if you have it in your office.
5 You didn't distribute it?

6 THE PRESIDENT: Mr. Conyns Carr.

7 MR. CUNNINGHAM: I want to suggest that 1571
8 was in Mr. Blakeney's order of proof but it was with-
9 drawn because the stipulation had been entered into
10 but he referred to the document perhaps for a differ-
11 ent reason than I did. I'll pass it for a few minutes.
12 They have sent out for the copies and it will be
13 here in a few minutes.
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1 I now offer in evidence defense document 1409.
2 We do so with the specific purpose of showing that the
3 strength of the communists in China was the Communist
4 Army, just as today. We can see without looking too
5 far about us the effect of a revolutionary military
6 force upon the sovereignty of a nation. Must we show
7 that it happened in Japan before it becomes a threat
8 to the peace of this Nation? We think not. This docu-
9 ment enforces our theory that the existence of a
10 communist army in China actually threatened the very
11 existence of Japan and justified a defensive agreement
12 to prevent its spread.

13 This document should be admitted. It springs
14 from the Cabinet Information Board of the Japanese
15 Government.

16 THE PRESIDENT: Mr. Comyns Carr.

17 MR. COMYNS CARR: Your Honor, with regard to
18 document 1409, it is a long argumentative report by
19 the Cabinet Information Board, full of opinion. It
20 purports to bear the date July 24, 1936 but that is
21 obviously incorrect because it refers to matters up
22 to 1939. There is no statement indicating the source
23 of the assertions which it contains and it is peppered
24 with phrases such as "we cannot imagine" and "it is
25 said. In our submission the document has no probative

1 value and, for the reasons already so many times sub-
2 mitted, if it had the subject matter is irrelevant.

3 MR. CUNNINGHAM: I refer the Tribunal
4 especially to page 5 and on page 7 which seem to be
5 the crux of the advice given the cabinet by the
6 Cabinet Information Board. There may be a mistake on
7 the date; it may be '39 instead of '36 but that will
8 be corrected. But I submit that the cabinet could not
9 make decisions without some information. This Cabinet
10 Information Board seems to be the source of a great
11 deal of information upon which the Japanese cabinet
12 based its decision.

13 I am advised that the original Japanese docu-
14 ment reads 1939.

15 THE PRESIDENT: By a majority the Court
16 upholds the objection and rejects the document.

17 I think this is a convenient time to recess,
18 Mr. Cunningham. We will recess for fifteen minutes.

19 (Whereupon, at 1445, a recess was
20 taken until 1500 after which the proceedings
21 were resumed as follows, Lord Patrick,
22 Member from the United Kingdom of Great
23 Britain, not sitting:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: With the permission of the
4 Tribunal, the accused TOGO will be absent for the
5 balance of the session, conferring with his counsel.

6 Mr. Cunningham.

7 MR. CUNNINGHAM: I now go to 1571, which was
8 on Mr. Blakeney's order of proof, but I only intended
9 to refer to it in my order of proof; but he withdrew
10 it and therefore I offer the document for the purpose
11 of showing that the Anti-Comintern Pact and the Secret
12 Agreement were legal international agreements, and to
13 show that the agreements annexed to the pact were
14 abrogate also in accordance with international law
15 and custom; and since no evidence has been introduced
16 to show that Japan and Germany performed any illegal
17 acts pursuant to these agreements, we propose that
18 their effect must be considered null and void.

19 MR. COMYNS CARR: May it please the Tribunal.

20 THE PRESIDENT: Mr. Comyns Carr.

21 MR. COMYNS CARR: The document proves nothing
22 whatever except the agreed fact that when the Anti-
23 Comintern Pact was renewed in November 1941, the Secret
24 Agreement was not renewed with it.

25 THE PRESIDENT: Major Blakeney, I understand,

1 withdrew it because it proved nothing beyond that.

2 MR. COMYNS CARR: And that fact was agreed.

3 MR. CUNNINGHAM: Well, if the prosecution
4 agrees that nothing was done under these agreements,
5 there is no reason why we should offer it.

6 MR. COMYNS CARR: That is not what we agreed,
7 nor does the document have any bearing on that question.
8 All that the document refers to, and all that we
9 agreed, was the fact that the Secret Protocol was not
10 renewed.

11 THE PRESIDENT: I think I should reject it as
12 surplusage on behalf of the Tribunal. It is rejected
13 accordingly.

14 MR. CUNNINGHAM: We now offer defense document
15 1541, which is an official press release of the United
16 States Department of State, corroborating and explain-
17 ing publicly the official United States protest to the
18 Soviet Union, as described in defense document 1543.
19 This document expresses virtually in its way what the
20 Anti-Comintern Pact expresses another way. We contend
21 that either method is a legal exercise of a sovereign
22 right of a nation or nations when they feel their
23 national security threatened by an outside force.
24 Diplomacy is the first step in the solution of such
25 problems.

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21 that either method is a legal exercise of a sovereign
22 right of a nation or nations when they feel their
23 national security threatened by an outside force.
24 Diplomacy is the first step in the solution of such
25 problems.

1 THE PRESIDENT: Well, I have before me two
2 documents, each numbered exhibit 2713. The first is
3 a copy of an affidavit by one Amen which I found on
4 my table on my return to the court this afternoon.

5 MR. COMYNS CARR: May it please the Tribunal,
6 prosecution objects to this document as wholly
7 irrelevant. What action the United States thought
8 fit to take, based, as a matter of fact, upon a special
9 agreement which they had with the U.S.S.R. is, we
10 submit, quite immaterial.

11 Might I remind the Tribunal that some weeks
12 ago at the request of the Tribunal, I endeavored to
13 clarify the position of the prosecution with regard
14 to this Anti-Comintern Pact, pointing out that we
15 alleged no objection to Japan or any other country
16 taking any steps it thought proper to prevent the
17 spread of communism or any other ideology within its
18 own borders, and that we only relied upon that pact
19 in so far as it was used as an excuse for armed
20 intervention in the affairs of other countries and
21 led up to military aggression in alliance with Germany
22 and Italy.

23 MR. CUNNINGHAM: If your Honors please, I
24 have before me page 22,451, which Mr. Carr said at
25 that time, and I see no similarity between the two

1 contentions. I should merely refer the Tribunal to
2 have it read those pages and determine for itself just
3 what the prosecution is now claiming for the Anti-
4 Comintern Pact, because it seems the position has
5 changed.

6 THE PRESIDENT: By a majority, the Court
7 upholds the objection and rejects the document.

8 MR. CUNNINGHAM: Defense document 1542 is
9 offered to show that the resolutions of the 7th
10 International All-World Congress was in violation of
11 the pledge of Soviet Russia to the United States of
12 November 16, 1933, as well as a menace to the national
13 security of Japan.

14 THE PRESIDENT: Mr. Comyns Carr.

15 MR. COMYNS CARR: In our submission, your
16 Honor, this document is precisely the same as the last
17 one in effect, and is covered by the ruling of the
18 Tribunal. We object to it for the same reason.

19 MR. CUNNINGHAM: I submit that Japan had
20 exactly the same right to make an anti-comintern pact
21 as the United States had to make a formal protest to
22 Soviet Russia against the activities of the 7th
23 International Comintern Convention, and they exercised
24 that right.

25 THE PRESIDENT: By a majority, the Court

1 upholds the objection and rejects the document.

1 MR. CUNNINGHAM: Defense document 1543 is now
2 offered to show that other nations, particularly the
3 United States, became especially concerned about the
4 activity of the 7th Congress. The United States being
5 one of the strongest nations in the world could accom-
6 plish by protest what Germany and Japan chose to effect
7 by an international agreement. This document shows the
8 firm attitude of the United States and the accompanying
9 documents show: the reaction of the Soviet Regime to
10 the protest. Other evidence to be introduced later
11 will show the Soviet reaction to the Anti-Comintern
12 Pact.

13 THE PRESIDENT: Mr. Comyns Carr.

14 MR. COMYNS CARR: Your Honor, this document
15 is open to exactly the same objections as the last two.
16 Actually it doesn't show what my friend alleges; it is
17 simply the Soviet reply to the previous document, giving
18 their reasons, good or bad, for the rejection of the
19 United States protest, and is, in our submission, entire-
20 ly irrelevant.

21 MR. CUNNINGHAM: I submit that this document
22 shows that the United States was protesting in that
23 day in their way exactly as they are protesting today
24 in another way.

25 THE PRESIDENT: By a majority, the Court upholds

1 the objection and rejects the document.

2 MR. CUNNINGHAM: I now offer in evidence
3 defense document 1669, which is by now historical
4 document in which it is shown that the threat of the
5 spread of communism in Europe became a reality. What
6 the venerable, great statesman, Mr. Churchill, says on
7 this highly controversial subject certainly has proba-
8 tive value.

9 It is necessary sometimes to meet ex post facto
10 charges with up-to-date proof. As the Indictment in
11 this case was being drawn in March 1946, the address,
12 of which this excerpt is a part, was being delivered
13 at Fulton, Missouri, in the United States. The explana-
14 tion meets the charge as it relates to Germany as well
15 as Japan. By this statement we expect to prove that
16 the desire to prevent the spread of communism through
17 the Anti-Comintern Pact was a wholesome agreement.
18 Only the part of the address which is material to this
19 issue has been excerpted.
20

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: May it please the Tribunal,
23 it is not easy to deal patiently with the offering of
24 this document.

25 THE PRESIDENT: The patience I am displaying
is not shared by all of my colleagues, I can assure you,

1 Mr. Carr. But better be patient than otherwise.

2 MR. COMYNS CARR: Much as I respect Mr. Winston
3 Churchill, in our submission his opinions in March 1946
4 about the state of world affairs at that time can have
5 no bearing of any sort, kind or description on the
6 issues before this Tribunal.

7 THE PRESIDENT: Mr. Cunningham.

8 MR. CUNNINGHAM: I think a reading of the
9 biography of Mr. Churchill from the World War days
10 will show that immediately after World War I he was
11 as rabid as anyone on the anti-Soviet problem. He
12 changed his view and went anti-Nazi in 1933. And in
13 1945 or 1946 again he changes his view. As a leader
14 of Great Britain we are entitled to show what the
15 attitude towards communism was by this great statesman,
16 and how even his attitude changed over a period of years.

17 MR. COMYNS CARR: Your Honor, I really must
18 protest against this kind of harangue being permitted
19 before this Tribunal.

20 MR. CUNNINGHAM: I respect the protest, but
21 I am not deterred thereby. But I feel that it is
22 essential to press every possible defense which we
23 have, and I believe that the opinion of a great states-
24 man, one of our leaders of today and of yesterday, cer-
25 tainly is pertinent to this question which is so prevalent

1 today, and was in 1936.

2 This document is not only offered as evidence
3 in this case specifically, but for the readers of this
4 case in history when this case may go down, and it
5 ought to be a part of the record in this case.

6 THE PRESIDENT: As a member of a great bar
7 you know you are not at liberty to press for the admis-
8 sion of a document on that ground in this case.

9 The Tribunal, by a majority, upholds the objec-
10 tion and rejects the document.

11 MR. CUNNINGHAM: In order to save hours,
12 perhaps days of time in showing to what extent the
13 leaders of communism were extending their activities
14 into the Japanese and German channels, we offer a brief
15 report of one of the greatest spy cases in history.
16 This document, 1317, which we now offer, discloses that
17 Sorge, one of the cleverest of Russian spies and espion-
18 age agents, invaded the German Embassy in Tokyo, destroyed
19 the ambassadorial career of the then German ambassador,
20 and caused an international incident.

22 It is impossible to evaluate the vast amount
23 of documentary evidence introduced by the prosecution
24 which originated with Ambassador Ott without having
25 some understanding of the situation which existed within
the German Embassy during his tour of duty, especially

1 since it will be shown that he was clearing his infor-
2 mation through the medium of a very clever Russian spy.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, those observa-
5 tions are founded upon a piece of newspaper gossip,
6 the document now tendered being an extract from the
7 Nippon Times of October 24, 1945. Even if the source
8 of the information had probative value, which numerous
9 rulings of the Tribunal have shown that it has not, in
10 our submission the question whether a German newspaper
11 correspondent who had some contact with the German
12 ambassador in Tokyo was or was not a spy would be
13 wholly irrelevant to this case.

14 Curiously enough the next document on my
15 friend's list by another journalist presents exactly
16 an opposite view of the nature and character of this
17 individual Sorge.

18 In our submission neither document has any
19 probative value, nor has the subject any relevance.
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1 MR. CUNNINGHAM: If your Honors please, the
2 burned German Embassy on the road to the War Ministry
3 bears evidence that the confidential documents upon
4 which this case is based are not available, and the
5 other documents which verify these facts are not
6 readily available to us. But, last evening, I ob-
7 tained an affidavit which is very, very short and
8 which verifies that the report by one of the associ-
9 ates of Sorge, which should be read into the record.
10 If there is any question of the authenticity, it
11 could take a week or a month to bring in the official
12 records of the trial of this case. But I merely want
13 to call it to the attention of the court as a matter
14 pertinent to the evaluation of the documentary evi-
15 dence which emanated from the German Embassy over
16 the pen of Eugene Ott.

17 THE PRESIDENT: The Tribunal upholds the
18 objection and rejects the document.

19 MR. CUNNINGHAM: I, then, merely make formal
20 offer of the next document, 1698G.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: And I formally object for
23 the same reason as the last one.

24 THE PRESIDENT: The objection is upheld and
25 the document rejected.

1 MR. CUNNINGHAM: I now offer to read parts
2 of an excerpt from the diary of Joseph E. Davies,
3 former Ambassador from the United States to Soviet
4 Russia. The diary "Mission to Moscow" is offered
5 for identification, and the excerpts therefrom are
6 offered into evidence. Being a diary and specifically
7 mentioned as acceptable evidence in the Charter, and
8 being recorded by an Ambassador to the government in
9 question, the evidence is both material and relevant.
10 To save time and documentation, several excerpts
11 are included in the same document.

12 I shall read only the first four sentences
13 of the first excerpt. The excerpts should be con-
14 sidered separately as they pertain to different sub-
15 jects, that is, if there is going to be objection
16 which, apparently, there is. I should like to go
17 through the list of excerpts, as the Court observes
18 them, and make my brief submission as to what each
19 excerpt we believe proves to us.

20 THE PRESIDENT: Mr. Comyns Carr.

21 MR. CUNNINGHAM: I wasn't quite through,
22 your Honor.

23 THE PRESIDENT: You will be able to reply
24 to him fully.

25 MR. CUNNINGHAM: But I haven't completed my

1 offer, your Honor, of the document. I wonder if I
2 could complete that before I hear the objection to
3 it.

4 THE PRESIDENT: We know, of course, Mr.
5 Cunningham, that your purpose is not to explain the
6 reasons for tendering these documents but to get into
7 the record as much as you can of documents which you
8 think may be rejected.

9 MR. CUNNINGHAM: Under the practice adopted
10 here I believe it is within my right to suggest what
11 I believe the document will do for me, and I ask that
12 the Court accept the explanation of what these ex-
13 cerpts are expected to prove.

14 THE PRESIDENT: Let us have your explanation.
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1 MR. CUNNINGHAM: The second excerpt shows
2 that Russia was furnishing aid to China although
3 acting friendly to Japan.

4 The third excerpt shows that Russia was
5 fast preparing for war with some unnamed nation of
6 the Far East.

7 The fourth excerpt throws light upon the
8 weak link binding Germany and Italy.

9 The fifth shows that Litvinoff did not
10 anticipate any aggressive action by Japan against
11 the Soviet Union as of March 17, 1938.

12 The sixth excerpt gives an insight into the
13 undemocratic manner in which the Soviet foreign
14 relations were conducted and of the Soviet leader.

15 The seventh says, I quote: "Any aggression
16 against the Soviet Union by Japan is out of the
17 question." (March 29, 1938) Coming from Litvinov,
18 this is relevant and of some value.

19 Excerpt eight of the excerpts in 1447 is
20 valuable on account of its last sentence, which indi-
21 cates that Russia was planning action against Japan
22 some day.

23 The ninth excerpt is quite revealing since
24 it corroborates the testimony given during the past
25 few days and is relevant to the issues covered.

1 Excerpt ten shows that Russia would have
2 done the same thing Japan did if the situation were
3 reversed.

4 The twelfth excerpt concerns Japanese pro-
5 test against Russia's breach of neutrality on the
6 China question.

7 The thirteenth excerpt is opinion not
8 borne out according to recent propaganda. At least,
9 there are two schools of thought.

10 The fourteenth excerpt confirms our con-
11 tention that the Comintern is a military and stra-
12 tegic project, as well as ideological.

13 Fifteen is skipped.

14 The sixteenth excerpt goes to the journal
15 of 4 June 1938, excerpt 16. A glance at this ex-
16cerpt will convince anyone that it bears on exactly
17 what we have been touching upon for this last week.

18 The seventeenth excerpt explains something
19 which has been a matter of suspicion for a long
20 time but seldom said except by those possessed of
21 special information as Mr. Davies.

22 The eighteenth excerpt: No. 5 and No. 7
23 may be helpful to the Tribunal in understanding what
24 we have been striving to establish during these past
25 three weeks.

1 Let us now refer to the last excerpt, page
2 410, entitled "Russia-Finland." The third sentence
3 rings one of the bells of our contentions.
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1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: In our submission, your
3 Honor, this document should be rejected in its en-
4 tirety. The book from which the excerpts are taken
5 is not, in the ordinary sense of the word, a diary
6 at all as is shown by the fact that, out of twenty-
7 two extracts on this document, eight of them bear
8 no date whatever and some of them are described as
9 being extracted from a summary. They are full of
10 opinion, as one would expect from such a book, and,
11 in our submission, almost the whole of it is irrele-
12 vent.

13 I do not know exactly to which particular
14 paragraphs my friend was referring by numbers because
15 the copy served upon us is not numbered, but I pre-
16 sume I should deal with them one by one as my friend
17 has done.

18 On page 1, the first, with an illegible date,
19 is utterly trivial and irrelevant in our submission.
20 It merely relates a friendly dinner party with SAITO,
21 who was, apparently, at the time Japanese Ambassador
22 in Washington, and the Russian Ambassador in Washing-
23 ton before Mr. Davies sailed for Moscow, and discusses
24 the foundation of some kind of international golf
25 club.

1 The second on page 1 merely states that the
2 Soviet has no intention of intervening in a military
3 way in the Japan-China War but would, as she was
4 perfectly entitled to do and as other peace-loving
5 countries were doing for similar reasons, aid China
6 without indulging in war or breaking diplomatic re-
7 lations with Japan.

8 The third on page 1 merely records Mr.
9 Davies' opinion, from various circumstances observed
10 by him, that the Soviet Union, as well she might, was
11 apprehensive of the breaking out of a fascist world
12 war and was taking such steps as she could to meet
13 it. That was in March, 1938.

14 On page 2, the first extract, undated, shows
15 that Litvinov foresaw a fascist peace imposed by
16 Germany and Italy and makes the very sensible prophecy
17 that Italy would have cause to repent having entered
18 into alliance with Germany.

19 The second one on page 2, undated, states
20 that some unnamed person said that Japan had approxi-
21 mately a million men in China, including three hundred
22 thousand in Manchukuo.

23 The third on that page says that Litvinov
24 and his daughter came to a meal and that Stalin was
25 desirous of seeing Mr. Davies personally.

1 The fourth on page 2 relates to the border
2 situation between Manchukuo and the USSR in March,
3 1938, and that Mr. Litvinov expressed the opinion
4 that Japan was too much tied up in China to contem-
5 plate any immediate military aggression against the
6 USSR.

7 The last one on page two expresses the same
8 opinion and, further, that, while the Soviet Govern-
9 ment did not conceal its deep sympathy for China, it
10 was meticulously careful to maintain peace with
11 Japan.

12 The fifth, undated -- the first one on
13 page 3, undated, is Mr. Davies' estimate of the
14 financial situation in the USSR at some unnamed
15 period and the proportion being devoted to prepara-
16 tions for possible war, and gives various estimates
17 by unnamed persons, one of which is twice as high
18 as the other, as to the strength of Soviet forces in
19 the Far East and rumors as to the total strength of
20 the Soviet Army.

21 The next item, undated, relates that fascist
22 governments are trying to isolate the USSR, and the
23 USSR is accepting that position.

24 In the last item on that page Mr. Litvinov
25 is said to have adopted the perfectly proper attitude,

1 in answer to a Japanese protest against their supply-
2 ing arms to China, that it was in accordance with
3 the principles of international law.

4 On page 4, in the first item, Mr. Davies
5 expresses his personal opinion that there is no
6 world danger from communism.

7 In the second item, undated, he reports the
8 opinion of the French Ambassador as to Stalin's reas-
9 ons for supporting the Comintern.

10 In the next item he reports the opinion of
11 a Mr. Blake, United States Vice Consul at Kobe, as
12 to the state of affairs in Japan.

13 In the last item on that page he reports his
14 best judgment and also, at the end of paragraph 1,
15 his impression as to the then state of affairs in
16 June, 1938, as between Russia and Japan. He gives
17 some estimates from unnamed sources as to the strength
18 of Soviet and Japanese troops in the Far East and
19 reports a statement by Litvinov that the Japanese
20 were buying up rubles on the black market.

21 In the first undated item on page 5, he
22 expresses his opinion as to the controlling power
23 in the Communist Party in the USSR.

24 In the next undated item from a summary he
25 expresses his information, from unnamed sources, as

1 to the strength and quality of Soviet armed forces.

2 In the last undated item on that page he
3 summarizes his opinion as to the relations between
4 the United States, the Soviets and Japan.

5 In the first item on the last page, Sep-
6 tember 16, 1929, he gives his opinion about the
7 state of affairs following the outbreak of the
8 European War and about the effect of the Ribbentrop-
9 Molotov Agreement.

10 In the second item on that page he expresses
11 his opinion that Stalin's whole plan since 1926 had
12 been to confine his attention to developing the in-
13 ternal prosperity of the Soviet Union.

14 In the last item but one he summarizes his
15 opinion of three months of war at the end of November,
16 1939 and of the real effect of the German-Russian
17 Non-Agression Pact.

18 In the last item he expresses his opinion
19 as to the war between Russia and Finland.

20 I am sorry to have had to detain the Tribunal
21 by going through this in detail, but there seemed no
22 other way.

23 THE PRESIDENT: We anticipate a lengthy
24 reply by Mr. Cunningham. If possible, we would like
25 to have a simultaneous translation of Mr. Cunningham's

1 reply to save time. We will not take his reply be-
2 fore Monday.

3 We will adjourn until half-past nine on
4 Monday morning.

5 (Whereupon, at 1600, an adjourn-
6 ment was taken until Monday, 9 June 1947
7 at 0930.)

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